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CPLR 5234: Distribution of Proceeds of Personal Property-- Priorities

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of factual disputes could be obtained in a special proceeding. The effect of this special proceeding will be to expedite the satisfaction of money judgments.

CPLR 5234: Distribution of proceeds of personal property—priorities.

Under the CPA, except for execution, there was no express provision for priority between judgment creditors.²⁵⁷ As a result, the law became complex and somewhat confused. Recognizing this state of affairs and attempting to clarify existing law, CPLR 5234 was enacted with a resultant statutory basis for determining priorities.²⁵⁸

Recently, the first department reversed a lower court's interpretation of this section.²⁵⁹ In that case Judgment Creditor *A* had: (1) served a restraining notice on a garnishee pursuant to CPLR 5222; (2) served an information subpoena on the garnishee pursuant to CPLR 5224; and (3) commenced a special proceeding against the garnishee pursuant to CPLR 5227 in order to obtain a turnover order against the debtor's property. Judgment Creditor *B*, who had recovered the earlier judgment, delayed in executing his judgment but obtained a levy on the garnishee *prior* to the issuance of *A's* turnover order. The question presented was which of the creditors had priority. The lower court, because of *A's* diligence and in reliance upon precedent which antedated the CPLR, held that Judgment Creditor *A* had priority. In reversing, the appellate division fully investigated the legislative history of CPLR 5234 and concluded that this provision established an order of priority which is determined strictly in accordance with the chronological service of execution levies and the filing of orders for turnover or receivership. The court noted that by prescribing the ranking of priorities, the section eliminated the earlier decisional variations and factual tests attempting to make such a determination based on the comparative diligence of the creditors.

The practitioner should note that regardless of the priority of obtaining judgment, the judgment creditor who first levies execution or files a turnover order will always prevail.

²⁵⁷ THIRD REP. 734.

²⁵⁸ FIFTH REP. 637.

²⁵⁹ *City of New York v. Panzirel* (Sup. Ct. N.Y. County), 151 N.Y.L.J., April 10, 1964, p. 14, col. 3, *rev'd*, 23 App. Div. 2d 158, 259 N.Y.S.2d 284 (1st Dep't 1965); see 7B MCKINNEY'S CPLR 5234, supp. commentary 42 (1965).